

# Optional Approaches for Code of Conduct

## I. The "Regulatory" Approach -- create a detailed code of ethics for legislators

- A. Description -- under this approach, the Legislature, via rule, would attempt to define precisely which conduct is and is not allowed.
- B. Advantages
  - 1. Greater certainty for Legislators, Independent Ethics Commission, and Ethics Committees about what exact conduct is permitted/prohibited.
- C. Disadvantages
  - 1. Time consuming and controversial to develop -- this committee will need to develop the code based upon their values and their colleagues' values.
  - 2. Once the code is complete, some issues will fall between the cracks and still require judgment calls by the commission, committee, and their members.
  - 3. Regular additions and clarifications will probably be necessary as gray areas arise.
- D. Example

### ***Relations with Lobbyists***

*(1) A legislator may not (knowingly?):*

*(a) allow a lobbyist to use the legislators office for any purpose;*

*(b) attend a meal with a lobbyist or group of lobbyists unless:*

*(i) the legislator pays all expenses that the legislator incurs (food, drink, entertainment, etc.) associated with the meal; or*

*(ii) the legislator dines with the lobbyist or group of lobbyists as part of an organized fundraiser or other event that includes multiple legislators and lobbyists;*

*(c) accept intangible favors from a lobbyist, including:*

*(i) assistance with an employment search;*

(ii) *staff assistance in performing the legislator's duties as a legislator*

(iii) *ghost-written speeches memos or other documents designed to appear to be the work of the legislator;*

(iv) *etc.*

## **II. The "Broad Principles" Approach -- create general, broad rules of conduct for legislators**

A. Description -- This approach would be similar to the existing legislative code of conduct: broad principles, with the application of those principles being clarified via decisions made by the Independent Ethics Commission and the Ethics Committees.

B. Advantages:

1. Easier to decide on broad values and rules of behavior for legislators rather than trying to anticipate and regulate every detail.
2. Allows ethics rules to evolve as values change and are reflected in the decisions of the commission and the committees.
3. Rules will probably not need to be adjusted or modified on a regular basis.

C. Disadvantages

1. Significantly less certainty for legislators attempting to determine what conduct is "ethical" or not.
2. Allows individual legislators to make judgments on what is "ethical" or not, resulting in less consistency in how legislators treat similar issues.
3. If ethics complaints are not filed, or if the Independent Ethics Committee and the Ethics Committees are unable to issue decisions "fleshing out" the general rules, legislator uncertainty about what is "ethical" will continue.

D. Example

### ***Relations with Lobbyists***

*Although lobbyists have a vital role to play in the legislative process, a legislator shall ensure that the legislator's interaction with lobbyists does not raise even a hint of impropriety.*

### III. The "Combined" Approach

A. Description -- Under this approach, the Legislature would make rules establishing broad, general ethical requirements and supplement those with more specific requirements where necessary or needed. Over time, this approach could evolve into the regulatory approach.

B. Advantages

1. Provides broad guidelines and specific ethical requirements in certain areas.

C. Disadvantages

1. It may be difficult to decide when broad guidelines are sufficient and when specific regulations are necessary.
2. The Independent Ethics Commission and Ethics Committees may decline to act on difficult cases, instead requesting that the Legislature make or modify rules to clarify situations that the commission or committees may not wish to decide.
3. Will result in "holes" -- in some instances, legislators will know precisely what is allowed or prohibited, while in other cases they will not.

D. Example:

***Relations with Lobbyists***

- (1) *Although lobbyists have a vital role to play in the legislative process, a legislator shall ensure that the legislator's interaction with lobbyists does not raise even a hint of impropriety.*
- (2) (a) *A legislator shall act toward a lobbyist in a mature, restrained, and professional manner.*  
(b) *A legislator may not:*
  - (i) *allow a lobbyist to use the legislators office for any purpose;*
  - (ii) *etc.*